

ORS 23.240(2)  
Homestead Exemption

Corcilus v. Hartvig (In re Corcilus), BAP No. OR-90-1767 (9th Cir. BAP 1993) unpublished (affirming Judge Perris)

For proceeds from the sale of a residence to be exempt under ORS 23.240(2), two conditions must be met. First, the proceeds can only be held for a year. Second, the proceeds must be held with the intention to procure another homestead. The trial court did not err in finding that the second element was not met, and therefore the proceeds from the sale of the debtor's residence were not exempt.

P93-14 (5)

# NOT FOR PUBLICATION

U.S. BANKRUPTCY COURT  
DISTRICT OF OREGON  
FILED

# FILED

JUN 30 1993

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U.S. BKCY. APP. PANEL  
OF THE NINTH CIRCUIT

## UNITED STATES BANKRUPTCY APPELLATE PANEL

### OF THE NINTH CIRCUIT

In re

RANDY J. CORCILIOUS,

Debtor.

RANDY J. CORCILIOUS,

Appellant.

v.

DONALD H. HARTVIG, Chapter  
7 Trustee; L. Hazel Watson,

Appellees.

) BAP No. OR-90-1767-OJR

) BK. No. 390-31561-P7

### MEMORANDUM

Argued and Submitted on February 17, 1993  
at Portland, Oregon

Filed - JUN 30 1993

Appeal from the United States Bankruptcy Court  
for the District of Oregon

Honorable Elizabeth L. Perris, Bankruptcy Judge, Presiding

Before: OLLASON, JONES and RUSSELL, Bankruptcy Judges.

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1 funds. Or. Rev. Stat. § 23.240(2)<sup>1</sup>. The trustee filed a  
2 timely objection on June 4, 1990 just days before the one year  
3 mark of the sale of the homestead. The trustee argued that  
4 Corcilius did not meet the requirements of the statute because,  
5 by the time of the hearing, the funds had been held more than  
6 one year. Trustee also argued that Corcilius did not have the  
7 requisite intent to purchase another homestead.

8 Corcilius argued that the statute should be construed to  
9 mean that he had one year from the date of receipt of the funds  
10 to use them for another homestead. Therefore, because he had  
11 not yet received the funds, the time period had not begun to  
12 run. Alternatively, if it had begun to run it was tolled by one  
13 of the intervening events - the holdback agreement, the  
14 injunction obtained by the ex-wife, the filing of the  
15 bankruptcy, or the objection to the exemption filed by the  
16 trustee. Furthermore, Corcilius claims that he did have the  
17 requisite intent to purchase another homestead.

18 The bankruptcy court upheld the objection finding that  
19 Corcilius did not hold the funds with the intent to procure  
20 another homestead. The court also ruled that the court found  
21 the one year period ran from the date of the sale.  
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23 <sup>1</sup>Or. Rev. Stat. § 23.240(2) states:

24 The exemption shall extend to the proceeds derived from  
25 such sale to an amount not exceeding \$15,000.00 or  
26 \$20,000.00, whichever amount is applicable under  
subsection (1) of this section, if the proceeds are held  
for a period not exceeding one year and held with the  
intention to procure another homestead therewith.

1 Furthermore, even if tolling were possible, it should not be  
2 applied in this case because Corcilius had voluntarily entered  
3 into the holdback agreement which ultimately led to the delay.  
4 This appeal followed.

#### 5 STANDARD OF REVIEW

6 The interpretation of state law is reviewed de novo. The  
7 issue regarding Corcilius' intent to purchase another homestead  
8 is an issue of fact that is reviewed under a clearly erroneous  
9 standard.

#### 10 ISSUES ON APPEAL

11 Did Corcilius hold the funds with the intent to procure  
12 another homestead?

#### 13 DISCUSSION

14 The Oregon statute has two conditions. The first, is that  
15 the proceeds be only held for a year. The second is that the  
16 proceeds be "held with the intention to procure another  
17 homestead therewith." Both conditions must exist.

18 The only evidence regarding Corcilius' intent to procure  
19 another homestead was vague testimony that the debtor had made a  
20 bid on a motor home within the time period. Corcilius did not  
21 recall many details of the matter and never followed up on it.  
22 He also never made any other attempts to purchase a homestead.  
23 The trial court found that Corcilius did not have the requisite  
24 intent stating that during the one year period Corcilius did not  
25 make an "effort to locate or purchase a new homestead."

26 The burden is on Corcilius to show that the bankruptcy

1 court's finding is clearly erroneous. He has been unable to do  
2 that. In fact, the record supports the court's finding. The  
3 holdback agreement was simply an attempt to gain time to  
4 negotiate with Watson. If anything, it appears that Corcilus  
5 just sat back until the wife obtained the injunction. The trial  
6 court's finding was not clearly erroneous.

7 **CONCLUSION**

8 Both conditions of the Oregon statute must be met for the  
9 exemption to allowed. The bankruptcy court denied the exemption  
10 finding that Corcilus did not have the requisite intent. This  
11 finding is not clearly erroneous. Therefore, the bankruptcy  
12 court is AFFIRMED.